INDEX

	Pages
STATEMENT OF CASE	2-8
ARGUMENT	8-10
CERTIFICATE OF SERVICE	11

LIST OF AUTHORITIES

Black's Law Dictionary	6
Bowles v. Bryant, 247 S.W. 276	6
Farmers Loan & Trust v. Wentworth, N.Y.S. 456	7
Hamm v. Hamm, 204 S.W. (2) 113	5
Hatch v. Kubana, 190 S.W. (2) 175	5
Holland v. Jackson, et al, 37 S.W. (2) 726	2,5,6,8,10
Hutchen v. Dresser, C.C.A. 196 S.W. (Con's 5 # 16)	4
Leonard v. Hale, 137 S.W. 865	6
Maury v. Turner, 244 S.W. 809	5
Sayles Rev. St., Art. 3364-3365	4
Scudder v. Union Nat'l Bank of Chicago, 77 U.S. 331	4
Supply Co. v. Vohrees, 202 S.W. (2) 422	6
Ware v. Ware, 194 S.W. (2) 399	6

No. 816.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

IN RE: ESTATE OF
JOHN L. JACKSON, Deceased. MATT ATWOOD,
PETITIONER

VS.

DAN E. LYDICK, WALTER B. SCOTT,
ROBERT I. JACKSON.
RESPONDENTS.

PETITIONER'S MOTION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF.

STATEMENT OF CASE.

March 4th, 1926, Sarah Vestal Jackson, filed WILL of her late husband John L. Jackson, for probate in Probate Court of Los Angeles County, California. She was appointed by California Court, Independent Executrix, with WILL annexed, without bond. She brought Certified Copy of WILL Proceedings to Texas,

where she filed in Ancillary Probate Court of Travis County, Texas, May 26th, 1926. Judge Matthews, admitted WILL to Probate, together with Order of California Court, and for issuance of letters of administration with WILL annexed.

Lydick said in letter to Judge Matthews January 15th, 1930, he had no interest in Jackson's estate; he had $120,000 that belonged to estate he would turn over to Administratrix; and entire estate when ordered to by Probate Court of Travis County; thus showing he had control of entire estate in 1930.

MAIN ISSUE in this case is domicile of Jackson at time of his death; The Supreme Court of Texas settled that question against Respondents in *Holland v. Jackson, et al*, 37 S.W. (2) 726, July 28th, 1931.

With issue of domicile settled, it made Foreign Will Case, and fixed Jurisdiction by law; and denied the Respondents the right to file case in Texas Court for first time.

Another reason for denying it, contest was filed more than NINE (9) years after case was filed in Travis County; it was therefore without JURISDICTION; all Texas Courts, as well as Supreme Court of the United States, fell into the same ERROR.

Judge Matthews, Probated Jackson's WILL Ancillary May 26th, 1926, in Travis County; Respondents filed their first contest May 28th, 1935; Judge Mat-

thews, denied it, and told them if they wanted to contest Jackson's WILL, they would have to go to California to start it.

Respondents thereafter appealed to 98th District Court of Travis County, Judge Moore, Judge of that Court, held his Court was without Jurisdiction; Respondents applied to Judge Moore, 2nd time, when he again said, he would find as he did before, he had no Jurisdiction.

Dan Moody, one of Respondents' Attorneys, sought Judge Dolan of Georgetown, Texas, Moody's home town, to come into case, he knew Dolan could be influenced; to find judgment for them; lawyers, including Moody, knew they had no jurisdiction.

When Mrs. Jackson's lawyer showed Judge Dolan, the law of limitations; that after One (1) year in California WILL was FIATED forever, and law does not apply to Ancillary Probate in Texas; Dolan said, yes, I know that is the law, but I will find for them; Dolan then told Respondents' lawyers to write judgment and he would sign it.

Judge Dolan, had no right to entertain contest of Foreign Will Case in Texas, for the first time.

NOT FILED IN PROPER COURT.

Citations:

Sayles Rev. St., Art. 3364-3365.

> Authorizing contest of wills and suits to cancel in the proper courts, the District Court had no jurisdiction of a suit to cancel a FOREIGN WILL, certified copy of which was filed for record in a county in which lands disposed of were situated, as authorized by Art. 5353, which provides that the validity of such will may be as the original might have been court is not the proper court within such Art. 3364-3365, which contemplates suits in courts in which wills are probated.

Hutchen v. Dresser, C.C.A. 196 S.W. (con's 5 # 16.)

> Giving County Court Jurisdiction of Probate Court, and Art. 3433, providing provision of a probated will shall be executed unless annulled by order of court probating it. The County Court has exclusive original jurisdiction over probate matters.

Scudder v. Union Nat'l Bank of Chicago, 77 U.S. 331.

> Matters bearing upon the execution, the interpretation and validity of contracts are determined by law of the place the contract is made; matters connected with its performance are regulated by the law prevailing at the place of performance.

VOID JUDGMENTS

Citations:

Maury v. Turner, 244 S.W. 809.

> Where invalid on its face, give notice to the world that it is not authorized.

Hamm v. Hamm, 204 S.W. (2) 113.

> Judgment in absence of requisite jurisdiction is *VOID* and binds no one.

Hatch v. Kubana, 190 S.W. (2) 175.

> Where record without resort to evidence aliunde affirmatively shows the invalidity of judgment sought to be enforced, its invalidity may be pointed out by any one, in any kind of procedure, in any court, and at any time.

FULL FAITH and CREDIT.

The Supreme Court of Texas, rendered judgment against Respondents, in *Holland v. Jackson, et al*, 37 S.W. (2) 726, July 28th, 1931, when they found at time of his death, Jackson had his domicile in California. With that issue settled, all the Courts, including Supreme Court of the United States, were bound to give this case, FULL FAITH and CREDIT.

Citations:

Holland v. Jackson, et al, 37 S.W.(2) 726. (S.Ct. of Tex.)

Supply Co. v. Vohrees, 202 S.W. (2) 422.

Ware v. Ware, 194 S.W. (2) 399.

POWER OF ATTORNEY COUPLED WITH AN INTEREST.

Citations:

Black's Law Dictionary:

> We hold it to be clear that the interest which can protect a power after death of the person who creates it must be an interest in the thing itself.

Leonard v. Hale, 137 S.W. 865.

> An administrator with will annexed held authorized to exercise power of attorney.

Bowles v. Bryant, 247 S.W. 276, Pgh. 1.

A power of attorney coupled with an interest, cannot be revoked by the grantor of the power. 203 U.S. 126.

> The phrase coupled with an interest in connection with power of attorney, does not mean an

interest in the exercise of the power, but an interest in the property on which it is to operate.

Farmers Loan & Trust v. Wentworth, N.Y.S. 456.

If power has an interest it is irrevocable.

STATEMENT.

Mrs. Sarah V. Jackson, wife of John L. Jackson, Deceased, gave Matt Atwood power of attorney, February 3rd, 1951. (Recorded in Power of Attorney Records of Tarrant County, Texas) in consideration of the interest he had in the estate of Jackson, Deceased, as compensation for work on, and his personal money spent over a period of more than Thirty (30) years, while it was being attacked by Lydick, et al.

The contest of Respondents was not legally filed in Probate Court of Travis County; it was purportedly filed May 28th, 1935; Jackson's WILL was filed in Travis County May 26th, 1926. The record shows that contest was filed NINE (9) years after Jackson's WILL was filed in Travis County; Respondents say in their petition to Supreme Court of Texas:

> "That the contestants had brought suit as contestants *without* four years after the filing of will for probate in Travis County, Texas; that the contestants had complied with the law with respect to the filing of the contest."

And further statement of same pleadings, says:

> The Court further finds that "the order of County Court of Travis County purportably creating ancillary probate proceedings in State of California is null and void and of no force and effect, and the same is hereby set aside".

The purported statements come from VOID judgment, and bind no one.

Respondents make further wrong statement, to effect that this case has been judicially determined against petitioner, when case of *Holland v. Jackson, et al*, 37 S.W. (2) 726, shows quite the opposite.

ARGUMENT.

Domicile is main issue in this case; Supreme Court of Texas, settled that question July 28th, 1931; in spite of that decision against them, they filed their first contest in Texas Court for first time, when they presented contest to Travis County Court, Judge Matthews denied it; and told them if they were going to contest Jackson's will, they would have to go to California to start it; they were put on notice they were in wrong court; thereafter they appealed to 98th District Court, Travis County, Texas. Judge Mooré, duly Elected Judge of that Court, twice (2) denied their contest on ground of jurisdiction; sustaining Probate Court; they were again told they were in wrong Court, and they had no jurisdiction.

They had no right to call Judge from another District to hear case for third (3) time; Dan Moody, one of Lydick's Attorneys, went back to his home town, where he got Judge Dolan, to come in and render judgment for Lydick et al. Moody and all other lawyers knew they could influence Dolan; Mrs. Jackson, and Atwood, objected strenuously to Dolan being substituted, as they knew he was prejudiced, biased, and influenced. All of Dolan's acts were void, and of no effect.

However inartfully drawn, *pleadings of petitioners tell the truth;* Jackson's WILL was made in Los Angeles County, California; testating witnesses lived there; they were County Officials; Judge who heard evidence and Probated WILL, was duly Elected Judge of Los Angeles County; lawyer representing Mrs. Jackson, lived there; Mrs. Jackson was appointed Administratrix with WILL annexed without bond.

She brought Certified Copy of WILL proceedings to Texas where it was filed in Travis County, on advice of her California Attorney.

Judge Matthews of Probate Court admitted WILL to Probate Ancillary with WILL annexed without bond. Respondents filed their first contest May 28th, 1935. Judge Matthews heard their contest, and denied it; and told them from bench "if they were going to contest Jackson's WILL they would have to go to California to start it." Giving them notice they were in wrong Court. Thereafter they appealed to

98th District Court of Travis County, Texas, where Judge Moore twice denied it on ground of jurisdiction.

They had no right to call Judge from another district to hear their case 3rd time; he had no authority or jurisdiction; 98th District Court had already denied it on ground of jurisdiction.

All of Judge Dolan's acts were without authority of law, and have no jurisdiction, and all of contestants objections were based on VOID Judgment, and binds no one.

The power of attorney Mrs. Jackson, gave Matt Atwood, is power with an interest, and cannot be revoked.

The Supreme Court of Texas, in *Holland v. Jackson, et al*, 37 S.W. (2) 726; said, with issue as to domicile waived, there was no basis for the trial Courts refusal to give to the case Full Faith and Credit.

There is no predicate in law to give the Temporary Administrator the right to maintain this suit, and he has no legal right to claim this estate.

WHEREFORE, petitioner prays that the United States Supreme Court, reverse its opinion of May 5th, 1957, and grant them reconsideration, and in duty bound will ever pray, Etc.

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W. C. Austin,
Attorney for Petitioner.

CERTIFICATE OF SERVICE

It is hereby certified that service of a true copy of this brief has been made on opposing counsel, J. A. Gooch, Sinclair Building, Fort Worth, Texas, by mail.

Dated ..... day of ....., 1957.

.....

W. C. Austin,
Attorney for Petitioner